Gan Too Cheh v Public Prosecutor
[2006] SGHC 23

Case Number : MA 100/2005

Decision Date : 10 February 2006

Tribunal/Court : High Court

Coram : Yong Pung How CJ

Counsel Name(s) : Julian Tay Wei Loong (Lee and Lee) for the appellant; Lee Cheow Han (Deputy Public Prosecutor) for the respondent

Parties : Gan Too Cheh — Public Prosecutor

Criminal Law – Statutory offences – Employment of Foreign Workers Act – Employing foreign worker outside conditions of work permit – Sections 5(3), 22(2) Employment of Foreign Workers Act (Cap 91A, 1997 Rev Ed)

Criminal Procedure and Sentencing – Appeal – Finding of fact by trial judge based on assessment of witnesses' credibility and veracity – Whether such finding plainly wrong or against weight of evidence

Criminal Procedure and Sentencing – Sentencing – Whether sentence manifestly excessive – Appellant previously convicted for different offence – Appellant accusing Prosecution witnesses of lying at trial

10 February 2006

Yong Pung How CJ:

1 This was an appeal against conviction and sentence for employing a foreign worker outside the conditions of the work permit, an offence under s 5(3) of the Employment of Foreign Workers Act (Cap 91A, 1997 Rev Ed) ("the Act"). I dismissed the appeal and now give my reasons.

The facts

The undisputed facts

2 The appellant is a hawker who sells fresh fruits at two adjacent stalls ("the fruit stalls") in a wet market in Hougang ("the Hougang market"). On 25 September 2004 ("the Arrest Date"), her Indonesian domestic worker, Ponirah Namarja ("Ponirah"), was arrested at the fruit stalls by a team of officers from the Ministry of Manpower ("the MOM officers"). The appellant was subsequently charged as follows:

> [T]hat you, from on or about **Mid Oct 2002 to 25 September 2004** at one **Fruit Stall of #01-164/171 at Blk 209 Hougang Street 21 Kovan/Hougang Market & Hawkers Ctr Singapore 530209**, did employ a foreigner, namely, **Ponirah Namarja (PPT No. AE484679)** otherwise than in accordance with the conditions of the Work Permit No. 004177371 issued to the said foreigner, to wit, you had instructed the said foreigner to work at the said fruit stall as a Stall Assistant when she was issued a work permit to be employed by you only as a Domestic Worker and you have thereby committed an offence under Section 5(3) of the Employment of Foreign Workers Act (Cap 91A) and punishable under Section 22(2) of the same Act.

The Prosecution's evidence

3 According to the Prosecution, on the morning of the Arrest Date, the MOM officers went to

the Hougang market after receiving an anonymous complaint about a possible infringement of the Act at the fruit stalls. They first observed the fruit stalls for some time from a distance of about 8m. During that period ("the surveillance period"), Inspector Anthony Low ("PW1") and Assistant Employment Inspector Fadilah bte Mohammad ("PW3") saw Ponirah tying bananas and carrying boxes of fruit at the fruit stalls. PW3 also noticed the maid arranging grapes for display. Ponirah was working alone, and no one was seen instructing her as to what to do. The MOM officers then moved in for a closer inspection of the fruit stalls. While PW1 and PW3 were questioning the appellant and Ponirah respectively, Employment Inspector Aw Chin Hock ("PW4") took eight photographs of the fruit stalls ("the photographs") as evidence of the offence. It should be noted that none of the photographs showed Ponirah actually working at the fruit stalls.

4 At the time of her arrest, Ponirah, who had been working for the appellant since 15 July 2002, was serving her second term of employment. She testified that she started assisting at the fruit stalls in October 2002, roughly three months after her first term of employment began. Prior to that, she worked solely at the appellant's residence ("the flat"). For the month of October 2002, Ponirah helped out at the fruit stalls only on Saturdays. From November 2002 onwards, she worked there daily from Tuesdays to Sundays. She did not have to do so on Mondays as the fruit stalls were usually closed on that day of the week. On the one Monday of each month which coincided with a special festive occasion ("Special Monday"), however, the fruit stalls would be open and Ponirah would work there on those Mondays as well. It was the appellant who instructed her to do so and who taught her what to do at the fruit stalls. Apart from Ponirah, the appellant's husband also worked at the fruit stalls daily, while the appellant's daughter ("DW2") and younger son helped out on weekends.

5 Ponirah elaborated that her routine on days when she assisted at the fruit stalls was as follows. At 6.00am, she would go to the Hougang market with the appellant. There, she would open the fruit stalls, remove the fruits from the refrigerator and lay them out for sale. Fruits such as watermelons and pineapples would be cut before they were displayed, and bananas would be hung up. On Special Mondays, Ponirah would also lay out cakes used by devotees for praying ("prayer cakes"). Having finished these tasks, which usually occupied her till around 9.00am, she would return to the flat where she would carry out household duties such as cleaning, ironing and cooking. Three times a week, apart from helping out at the fruit stalls, Ponirah also had to buy food and vegetables for the appellant's family from the Hougang market.

The Defence's evidence

6 The Defence denied that the appellant had instructed Ponirah to work at the fruit stalls as stated in the charge. Although Ponirah was at the fruit stalls on the Arrest Date, this was because the appellant had brought her there to keep an eye on her. To explain why the appellant did so, the Defence adduced evidence of events which allegedly took place from July 2004 onwards.

7 To begin with, there was a marked change in Ponirah's work attitude soon after her second term of employment began on 8 July 2004. The maid became lazy and refused to do a lot of work, whereas she had been "very hard working with pleasant attitude" during her first term of employment. DW2 cited a Sunday morning in July 2004 when Ponirah returned from her routine marketing duties at the Hougang market some two hours later than usual. The maid claimed that she was late as she had gone to visit a cousin who worked near the flat. When DW2 asked Ponirah's cousin, in Ponirah's presence, if this explanation was true, Ponirah's cousin initially denied that the visit had taken place before hastily saying, after Ponirah's angry interjection in Malay, that there had indeed been such a visit.

8 In that same month, the appellant's family started receiving numerous calls for Ponirah, including calls from one "Dhana" who claimed that Ponirah owed him $300 and demanded that the appellant's family pay up on the maid's behalf ("the nuisance calls"). Annoyed by the deterioration in Ponirah's job performance and the nuisance calls, the appellant decided to employ a new maid to replace Ponirah. Her application for a replacement maid was approved in principle by the Ministry of Manpower on 17 September 2004. Additionally, in order to stem the nuisance calls, the appellant changed the telephone number of the flat on 23 September 2004. The nuisance calls did stop thereafter, but the appellant remained concerned that something untoward might happen to her and her family. Eventually, as a precautionary measure "[i]n case [she] was murdered", she made a police report on 28 September 2004 about the nuisance calls ("the police report").

9 Prior to that, the appellant had on 18 September 2004 taken Ponirah to the maid agency which had arranged for her employment ("the maid agency"). There, the appellant sought the help of the maid agency's staff in ascertaining who "Dhana" was as she did not understand much Bahasa Indonesian herself. On that same occasion, both the appellant and the maid agency's boss told Ponirah that she was going to be dismissed from the appellant's employment and sent back to Indonesia. Ponirah at once retorted, "Never mind that you are sending me home but someone is going to harm you." Fearful of what Ponirah might do pursuant to this threat, the appellant brought the maid to the fruit stalls daily from 19 September 2004 onwards so as to keep an eye on her. While Ponirah was there, she spent her time chit-chatting with people at the back of the fruit stalls. The appellant did not instruct Ponirah to work at the fruit stalls; neither did she ever see the latter doing so. It was suggested that Ponirah might, however, have either pretended to work or actually worked at the fruit stalls while she was there so as to "set [the appellant] up".

10 Ponirah accepted certain aspects of the Defence's evidence when she was cross-examined. Specifically, she agreed with DW2's account of her late return from the Hougang market on the Sunday morning in July 2004 ([7] *supra*). She claimed, however, that she did not lie to DW2 about visiting her cousin on that occasion. Ponirah also confirmed that the nuisance calls had been made to the flat, but said that she did not know who "Dhana" was. She accepted that it was the nuisance calls which prompted the appellant to bring her to the maid agency for questioning on 18 September 2004. Ponirah denied, however, that she was told of her impending repatriation to Indonesia either at the maid agency on 18 September 2004 or at any other time during her employment with the appellant; neither did she threaten the appellant at the maid agency as the Defence alleged. She added that following the visit to the maid agency, she remained in the flat for one week without going out as instructed by the appellant, after which she resumed going to the fruit stalls with the latter.

The decision at first instance

11 The trial judge found Ponirah and the MOM officers to be truthful witnesses. In her view, the lack of photographs which showed Ponirah actually working at the fruit stalls ([3] *supra*) did not weaken the Prosecution's case since the MOM officers had given first-hand evidence of what they saw the maid doing there on the Arrest Date. She also considered the uncertainty as to whether the surveillance period was 40 minutes as PW1 and PW3 testified or 15 minutes as PW4 stated inconsequential since what mattered was the quality of the observation.

12 In contrast, it was held that the appellant was not a credible witness given her demeanour in court and the contents of her evidence. The trial judge dismissed the police report as an afterthought devised by the appellant to fabricate evidence for her defence. She likewise rejected as implausible the appellant's explanation for Ponirah's presence at the fruit stalls on the Arrest Date.

13 Having assessed all the relevant facts and circumstances as well as the respective witnesses'

credibility, the trial judge accepted the Prosecution's evidence in lieu of the Defence's evidence and convicted the appellant of the offence charged. She placed particular emphasis on the fact that Ponirah was familiar with the routine and her duties at the fruit stalls, and was even aware that prayer cakes were sold there on Special Mondays. Such detailed knowledge, it was held, indicated that Ponirah must have been working at the fruit stalls regularly prior to her arrest. In light of the baseless aspersions which the appellant cast on the MOM officers (in particular, PW1 and PW3) during the trial and her previous conviction on 18 October 1975 for the offence under s 56(1)(*e*) of the Immigration Act (Cap 81, 1970 Rev Ed) (employment of illegal immigrants), the trial judge sentenced her to a fine of $4,000.

The appeal against conviction

14 Before this court, the appellant raised a multitude of factors which were said to militate against her conviction. I have in this judgment dealt with these factors under the following heads:

(a) The trial judge erred in accepting the Prosecution's evidence as it was unreliable.

(b) The trial judge's reasons for rejecting the appellant's defence were unsound.

(c) The trial judge was wrong to hold that Ponirah was familiar with the activities at the fruit stalls because she had worked there regularly prior to her arrest.

(d) There was no evidence which supported Ponirah's claim that she had assisted at the fruit stalls since October 2002.

15 In assessing the appellant's case on each of the above issues, I had it in mind that the trial judge's conclusion that Ponirah did work at the fruit stalls throughout the period stated in the charge was essentially a finding of fact based on an assessment of the witnesses' credibility and veracity. It is trite law that findings of this nature should not be overturned unless they are plainly wrong or against the weight of the evidence: see, *inter alia*, *Lim Ah Poh v PP* [1992] 1 SLR 713 at 719, [32], *Yap Giau Beng Terence v PP* [1998] 3 SLR 656 at [24] and *Ang Jwee Herng v PP* [2001] 2 SLR 474 at [62].

The trial judge's acceptance of the Prosecution's evidence

16 The appellant's criticisms in this area were that the trial judge erred in finding Ponirah a credible witness and placed undue emphasis on the testimonies of PW1, PW3 and PW4.

17 On the former point, counsel submitted that Ponirah had a propensity to lie, as evinced by her account of her visit to her cousin on the Sunday morning in July 2004 ([7] *supra*). She also gave inconsistent evidence at the trial. Although she testified that she worked at the fruit stalls daily from 8 July 2004 until the Arrest Date (except on Mondays when the Stalls were closed), she also stated that she stayed in the flat without going out for one week after the visit to the maid agency on 18 September 2004 ([10] *supra*). It was argued that Ponirah's explanation as to why she was told to remain in the flat during that one week – namely, that the appellant was afraid that the person behind the nuisance calls would ring Ponirah up again – was illogical, in that if the appellant did not want the maid to receive those telephone calls, she would not have left the latter in the flat. Most importantly, Ponirah had, so counsel asserted, "sufficient impetus or motive" to make false allegations against the appellant. In this respect, it was emphasised that Ponirah knew she was going to be sent back to Indonesia as the appellant had applied for a new maid to replace her. Counsel contended that Ponirah's denial that she was aware of her repatriation was unconvincing for she had given evidence

that this issue was discussed between the appellant and the maid agency's staff, but later "shifted her position" and claimed that she was not informed of it. Relying on my statement in *Khoo Kwoon Hain v PP* [1995] 2 SLR 767 at 781, [70] that "[t]he burden of proving a lack of motive to falsely implicate the appellant is on the [P]rosecution", counsel further submitted that the Prosecution had to prove that Ponirah did not have any motive to frame the appellant in the present case.

18 I found the appellant's attacks on Ponirah's credibility as a witness untenable for several reasons.

19 First, it is settled law that "even if a witness is found to have lied on a matter, it does not necessarily affect his credibility as a whole" (*Ng Kwee Leong v PP* [1998] 3 SLR 942 at [15]). As such, the trial judge was entitled to believe Ponirah even though she might indeed have lied about visiting her cousin on the Sunday morning in July 2004.

20 Second, while there was on the face of the Notes of Evidence an inconsistency in Ponirah's evidence as to whether or not she worked at the fruit stalls daily from 8 July 2004 up to the Arrest Date, there could well be a perfectly innocent explanation for this. Ponirah might have meant that she worked at the fruit stalls daily from 8 July 2004 to the Arrest Date except for the one week in September 2004 during which she remained in the flat without going out as instructed. Since neither the Prosecution nor the Defence asked Ponirah to clarify her evidence on this point at the trial, it would be unfair to impugn her credibility as a witness on this basis alone, especially when the rest of her testimony was, as the trial judge rightly observed, clear and unequivocal. Similarly, I was of the view that the apparent incongruity of Ponirah's explanation as to why she was told to stay in the flat for that one week without going out did not impinge on her credibility because the Defence did not put it to her during cross-examination that her explanation, given its seeming illogicality, must have been false.

21 Third, there was no sound basis for the contention that Ponirah had reasons for wanting to frame the appellant and was thus an unreliable witness. There was insufficient evidence to support the appellant's stance that Ponirah was told of her impending repatriation at the maid agency on 18 September 2004. The fact that the appellant had obtained in-principle approval to employ a replacement maid ([8] *supra*) was neutral as it did not give rise to any inference that Ponirah would therefore have known that she would be sent back to Indonesia. DW2's insistence during cross-examination that Ponirah was aware of this matter carried no weight as DW2 was not present at the maid agency at the material time and was merely told by the appellant about the events which allegedly took place there. I also noted that contrary to counsel's argument ([17] *supra*), it was clear from the Notes of Evidence that Ponirah never said that her repatriation was discussed between the appellant and the maid agency's boss on 18 September 2004.

22 Fourth, even if Ponirah knew that she was going to be sent home, this did not entail that she would therefore have wanted to falsely implicate the appellant, with whom she appeared to have a good working relationship. It was telling that at the trial, Ponirah described the appellant as "a very nice person" who often bought her phone cards so that she could call her family in Indonesia. The maid also said that her workload during her employment with the appellant was "not too heavy".

23 Since the Defence did not adduce sufficient evidence of Ponirah's alleged motive to frame the appellant, it was unnecessary for the Prosecution to prove a lack of such motive in the present case. With respect, counsel appeared to have misunderstood the statement in *Khoo Kwoon Hain v PP* ([17] *supra* at 781, [70]). As I clarified in *Goh Han Heng v PP* [2003] 4 SLR 374 at [33], the passage in *Khoo Kwoon Hain v PP* from which that statement was lifted simply means that:

> [W]here the accused can show that the complainant has a motive to false implicate him, then the burden must fall on the Prosecution to disprove that motive. This does not mean that the accused merely needs to allege that the complainant had a motive to falsely implicate him. Instead, *the accused must adduce sufficient evidence of this motive so as to raise reasonable doubt in the Prosecution's case. Only then would the burden of proof shift to the Prosecution to prove that there was no such motive.* [emphasis added]

24 Turning to the contention that the trial judge relied unduly on the oral testimonies of PW1, PW3 and PW4, the weaknesses in this part of the Prosecution's evidence were said to be as follows. There were differing accounts of the length of the surveillance period on the Arrest Date ([11] *supra*). The 40-minute period alleged by PW1 and PW3 was not reflected in either the Inspection Report or the Arrest Report. More importantly, none of the photographs captured Ponirah actually working at the fruit stalls ([3] *supra*) and no satisfactory explanation for this omission was given. In this regard, counsel pointed out that PW1 initially said that the MOM officers did not take any photographs of Ponirah during the surveillance period as that might have prevented them from spotting other tasks which she was performing, but later claimed that it was the heavy human traffic at the Hougang market which made it difficult for them to take photographs while they were observing the fruit stalls from a distance. PW4's evidence on this point was likewise unconvincing in that while he stated that he did not take any photographs of Ponirah during the surveillance period for fear that the camera's flash might alert her and cause her to flee, he also agreed that just one photograph alone of the maid at work would have been more representative of the offence in question. Counsel also highlighted that it was unclear from the evidence of PW1 and PW3 whether Ponirah was working at the fruit stalls on the Arrest Date *under the appellant's instructions* as alleged in the charge.

25 I was of the view that the above weaknesses in the testimonies given by PW1, PW3 and PW4 were apparent rather than real.

26 For one, there was no contradiction between the evidence given by PW1 and PW3 on one hand and that given by PW4 on the other hand as to the duration of the surveillance period on the Arrest Date. PW4 did not positively assert that the MOM officers observed the fruit stalls for only 15 minutes. He merely suggested 15 minutes as an estimate as that was the time usually taken and he could not recall how long the surveillance lasted in this particular case.

27 Second, counsel was wrong to say that the 40-minute duration stated by PW1 and PW3 was not reflected in the Inspection Report. According to that Report, the MOM officers had a briefing from 7.20am to 7.40am on the Arrest Date before proceeding to observe the fruit stalls. PW3 explained that since the briefing ended at 7.40am, it would have been about 8.00am by the time the MOM officers took up their positions at the Hougang market. Thus, approximately 40 minutes passed before the inspection started – *ie*, before the MOM officers moved in for a detailed inspection of the fruit stalls ([3] *supra*) – at 8.40am as recorded in the Inspection Report.

28 Third, there was nothing suspicious about the dearth of photographs showing Ponirah at work at the fruit stalls. The reasons given by PW1 and PW4 as to why there were no such photographs were plausible. PW1's initial explanation (namely, that the MOM officers might have missed noticing other tasks carried out by Ponirah if they had tried to take photographs while observing her at work) was not inconsistent with his later statement that the heavy human traffic at the Hougang market prevented them from taking photographs. It might well have been a combination of both factors which made the MOM officers decide not to take any photographs of Ponirah during the surveillance period. Similarly, although PW4 conceded that a single photograph of Ponirah actually working at the fruit stalls would have been more valuable evidence than all the photographs in fact taken, this did not

impinge on his reasons for not taking any photographs of the maid during the surveillance period. PW4 might have decided that the risk of Ponirah being alerted and fleeing if photographs were taken outweighed the potential benefits of having such photographs. In any event, as the trial judge rightly held, the absence of photographs showing Ponirah at work at the fruit stalls did not weaken the Prosecution's case since there was first-hand evidence from PW1 and PW3 of Ponirah's activities there on the Arrest Date.

29 Fourth, the fact that PW1 and PW3 were uncertain whether Ponirah had been instructed by the appellant to work at the fruit stalls on the Arrest Date was inconsequential. Since Ponirah was found to be a truthful witness at first instance, the trial judge was entitled to accept her evidence that the appellant had instructed her to work at the fruit stalls from October 2002 onwards and had taught her what she had to do there.

30 In light of the above considerations, I found no merit in the appellant's contention that the trial judge was wrong to accept the Prosecution's evidence in lieu of the Defence's evidence.

The trial judge's reasons for rejecting the appellant's defence

31 The trial judge rejected the two main tenets of the Defence's case, which were that:

(a) the appellant made the police report because she feared for her own as well as her family's safety ([8] *supra*); and

(b) she brought Ponirah to the fruit stalls daily from 19 September 2004 onwards so as to keep an eye on her ([9] *supra*).

Counsel submitted that the trial judge erred in this respect in that she took an overly simplistic view of the events preceding Ponirah's arrest. I was not at all persuaded by this argument as counsel failed to put forth any specific reasons as to why the trial judge's decision to reject the appellant's defence was flawed.

32 I was of the view that the police report was rightly dismissed at first instance as a vain attempt by the appellant to generate evidence for her defence. As the trial judge astutely pointed out, by the time the police report was made on 28 September 2004, the nuisance calls had ceased and Ponirah, having been arrested three days earlier, was no longer at the flat. As such, the source of the appellant's concerns for her own and her family's safety had been removed. At the trial, when asked to explain why she had waited till 28 September 2004 before lodging the police report given that she started receiving the nuisance calls much earlier, the appellant said that it was because:

The more I thought of it, the more fearful I was. Felt it was not right.

Tellingly, the appellant's alleged fears were not reflected in the police report. That document simply stated that the appellant was reporting the nuisance calls to the police "for [her] self-references and for future actions against the nuisance calls". The appellant attributed the absence of any mention of her alleged fears in the police report to her illiteracy in English. She claimed that she did not really understand the police report even though it had been read back to her. Like the trial judge, I found this explanation incredible. If the appellant had truly lodged the police report because she was worried about her own and her family's safety, she would logically have been careful to ensure that this specific issue was put on record and could not possibly have accepted a police report which did not incorporate this point.

33 I likewise concurred with the trial judge that the Defence's case that Ponirah was at the fruit stalls on the Arrest Date because the appellant had brought her there to keep an eye on her was unbelievable. According to the appellant, she was so frightened after hearing Ponirah's threat at the maid agency on 18 September 2004 that she felt she had no choice but to bring the maid to the fruit stalls to keep watch on her. In view of this, it was incongruous that while Ponirah was at the fruit stalls, she was allowed to remain at the back of the stalls out of the appellant's sight. The appellant claimed that she would check on Ponirah every five to 15 minutes when she went to the back of the fruit stalls to get fruits. This was, however, neither a practical nor an effective way to keep an eye on the maid. As the trial judge rightly pointed out, since the appellant was, according to the Defence, extremely worried about what mischief Ponirah might get up to, it would have made much more sense for the appellant to either repatriate the maid at once, report her to the police, or leave her at the maid agency. In light of the trial judge's sound and detailed reasons for rejecting the appellant's explanation for Ponirah's presence at the fruit stalls on the Arrest Date, I found no merit in counsel's criticisms of this aspect of her judgment.

The finding that Ponirah had been working at the fruit stalls regularly

34 At first instance, it was held that Ponirah's familiarity with the activities at the fruit stalls indicated that she must have worked there regularly prior to her arrest ([13] *supra*). Counsel took issue with this finding and suggested an alternative explanation for the maid's knowledge of these matters. Ponirah, it was pointed out, had worked for the appellant for more than two years as at the Arrest Date. During that period, Ponirah went to the Hougang market every Sunday (as opposed to three times a week as the maid stated: [5] *supra*) to buy food and vegetables for the appellant's family. On these occasions, she passed by the fruit stalls and had the chance to observe the items sold there, the way in which they were displayed and the members of the appellant's family who assisted with the business. On some of the Sundays preceding Special Mondays, Ponirah had also seen prayer cakes being laid out for sale. She had asked the appellant what the cakes were for, which was how she came to know that they were sold on Special Mondays.

35 Although counsel's alternative hypothesis was plausible, it did not account satisfactorily for the competency which Ponirah was seen to display as she went about her tasks at the fruit stalls on the Arrest Date. I noted that PW3, when asked whether Ponirah seemed lost or uncertain as to what to do, replied that she appeared "confident in doing her job". In my view, Ponirah would not have been able to arrange the fruits on her own as assuredly as she did on the Arrest Date if she had merely observed how the fruits were displayed at the fruit stalls once a week for the preceding two years without having a substantial amount of actual hands-on experience. The trial judge was thus entitled to rely on the maid's familiarity with the routine and her duties at the fruit stalls to conclude that she had worked there for the period stated in the charge.

The lack of evidence supporting Ponirah's testimony

36 Turning to the issue of supporting evidence for Ponirah's account of her work at the fruit stalls from October 2002 onwards, the testimonies given by PW1 and PW3 at the trial bore out the maid's claim that she had been working there on the Arrest Date itself. There was, however, as counsel highlighted, no supporting evidence for the period *prior to* the Arrest Date.

37 I felt that the absence of such supporting evidence did not render the trial judge's finding of guilt unsound in this case. While the trial court must be "extremely cautious" in convicting an accused based solely on a complainant's allegations (*Kwan Peng Hong v PP* [2000] 4 SLR 96 at [29]), the court may rely on the evidence of one witness alone provided it is aware of the dangers of doing so and subjects the evidence to close scrutiny before convicting the accused: *Low Lin Lin v PP*

[2002] 4 SLR 14 at [49]; *Yeo Eng Siang v PP* [2005] 2 SLR 409 at [25].

38 In the present case, the trial judge did scrutinise Ponirah's testimony with the requisite degree of care. For instance, in assessing Ponirah's credibility as a witness, she noted the possibility that the maid might have lied about visiting her cousin on the Sunday morning in July 2004 ([7] *supra*). She also tested Ponirah's claim that she was working at the fruit stalls on the Arrest Date against the appellant's explanation for the maid's presence there on that day ([9] *supra*). In these circumstances, the trial judge's finding that Ponirah did work at the fruit stalls for the *entire* period stated in the charge was unimpeachable even though there was no evidence, apart from Ponirah's own testimony, which supported the Prosecution's case for the period prior to the Arrest Date.

39 To summarise, I found that the appellant had not discharged the onus of showing that the trial judge's decision was plainly wrong or against the weight of the evidence. I thus dismissed the appeal against conviction.

The appeal against sentence

40 Turning to the appeal against sentence, it is established law that an appellate court will not interfere with the sentence imposed at first instance unless the trial court has (a) made a wrong decision as to the proper basis for sentence, (b) erred in appreciating the materials placed before it, (c) passed a sentence which is wrong in principle, or (d) imposed a sentence which is manifestly excessive or manifestly inadequate: *Arts Niche Cyber Distribution Pte Ltd v PP* [1999] 4 SLR 111 at [54].

41 None of the above factors were present in this appeal. Contrary to counsel's submission, the trial judge did not place undue emphasis on the appellant's previous conviction in 1975 of the offence under s 56(1)(*e*) of the Immigration Act. She merely cited that conviction as an indication that the appellant was not ignorant of the laws relating to the employment of foreign workers. The trial judge was also right to take into consideration the appellant's repeated allegations that PW1 and PW3 lied while testifying in court. As I cautioned in *Lewis Christine v PP* [2001] 3 SLR 165 at [38]:

> While accused persons are free to prove their innocence, ... this does not translate to a liberty to blatantly besmirch the repute of prosecution witnesses behind the shield of privilege in judicial proceedings.

42 The fine of $4,000 imposed at first instance was not manifestly excessive either. Section 22(2) of the Act states that the maximum penalty for the offence under s 5(3) is a fine not exceeding $5,000. In *PP v Fun Shee Pin* Ministry of Manpower Summons No 759 of 2005 (21 June 2005) (unreported) where this offence was committed over a period of two years and three months, the accused was fined $5,000; and in *PP v Goh Khah Gek* Ministry of Manpower Summons No 453 of 2005 (12 April 2005) (unreported) where the offence took place for some two years and seven months, the accused was fined $4,000. In view of these precedents, the fine imposed on the appellant for employing Ponirah at the fruit stalls for just under two years, although slightly on the high side, was not excessively high.

Conclusion

43 In summary, the appellant failed to satisfy me that the trial judge's finding of guilty was plainly wrong or against the weight of the evidence; neither did she advance any sound reasons as to why her sentence should be reduced. Accordingly, I dismissed her appeal against both conviction and sentence.